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13 Attorneys for Plaintiff
14 FREECYCLESUNNYVALE,

15 **UNITED STATES DISTRICT COURT**

16 **NORTHERN DISTRICT**

17 **OAKLAND DIVISION**

18 FREECYCLESUNNYVALE,
19 a California unincorporated association,

20 Plaintiff,

21 v.

22 THE FREECYCLE NETWORK,
23 an Arizona corporation,

24 Defendant.

25 THE FREECYCLE NETWORK, INC., an
26 Arizona Corporation,

27 Counterclaimant,

28 v.

29 FREECYCLESUNNYVALE, a California
30 unincorporated association,

31 Counterdefendant.

32 Case No. C06-00324 CW

33 **DECLARATION OF DENNIS S.
34 CORGILL IN SUPPORT OF
35 PLAINTIFF AND
36 COUNTERDEFENDANT
37 FREECYCLESUNNYVALE'S MOTION
38 FOR SUMMARY ADJUDICATION**

39 Date: August 23, 2007
40 Time: 2:00 p.m.
41 Before: Hon. Claudia Wilken
42 Location: Courtroom 2

1 I, Dennis S. Corgill, declare as follows:

2 1. I am an attorney licensed to practice in the State of California. I am an associate
 3 in the law firm Mayer, Brown, Rowe & Maw LLP, counsel of record for Plaintiff and
 4 Counterdefendant FreecycleSunnyvale in the above-captioned action. I am one of the attorneys
 5 representing FreecycleSunnyvale. I know the following facts of my own knowledge and, if
 6 called as a witness, could and would competently testify to the following facts.

7 2. On June 30, 2006, I initiated a meet and confer process with regard to several
 8 discovery issues in the above-captioned action. One of those issues concerns
 9 FreecycleSunnyvale's Request for Production Number 64, which requested, "Any and all
 10 documents, including archived electronic files, concerning a website, webpage, home page, or
 11 internet posting of any freecycle community, individual group, or local groups within the
 12 [Defendant and Counterclaimant The Freecycle Network's] network." The Freecycle Network
 13 has not agreed to produce any documents in response to this request.

14 3. In the course of the meet and confer, I have exchanged letters and held telephone
 15 conferences with Esha Bandyopadhyay and with Shane M. Glynn. Ms. Bandyopadhyay and Mr.
 16 Glynn are attorneys in the law firm of Perkins Coie LLP and who represent Defendant and
 17 Counterclaimant, The Freecycle Network, Inc. ("TFN"). True and correct copies of the letters
 18 that have been exchanged are attached collectively to this Declaration as Exhibit A.

19 4. Throughout the meet and confer, TFN has never objected that Request for
 20 Production Number 64 does not seek responsive documents. In a telephone conference on
 21 Tuesday, July 11, 2006, Ms. Bandyopadhyay agreed that Request for Production Number 64
 22 seeks documents that are relevant to the issues of (i) whether "freecycle" is a generic term, (ii)
 23 whether TFN engaged in naked licensing, and (iii) whether TFN dedicated its alleged trademarks
 24 to the public domain.

25 5. In a telephone conference with Mr. Glynn on June 8, 2007, TFN raised, for the
 26 first time, the objection that TFN does not have possession, custody, or control of all of the
 27 documents that are responsive to Request for Production Number 64. Mr. Glynn explained that

1 TFN is not a co-owner, moderator, or member of every online freecycling group that is listed as
2 an approved group on TFN's Web site. Mr. Glynn explained that, where TFN is not a co-owner,
3 moderator, or member, TFN does not have access to archived group files without the permission
4 of the group's owners or moderators. Mr. Glynn suggested that FreecycleSunnyvale might need
5 to seek responsive documents from Yahoo! Corporation by way of a third-party subpoena.

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7 I declare under penalty of perjury under the laws of the United States of America that the
8 foregoing is true and correct. Executed in Palo Alto, California, on July 17, 2007.

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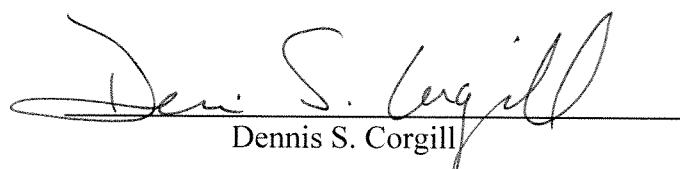
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Dennis S. Corgill